

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-and-

ORDER

07-CV-2067 (NGG) (RLM)

THE VULCAN SOCIETY, INC., *for itself and on behalf of its members*, JAMEL NICHOLSON, and RUSEBELL WILSON, *individually and on behalf of a subclass of all other victims similarly situated seeking classwide injunctive relief*;

ROGER GREGG, MARCUS HAYWOOD, and KEVIN WALKER, *individually and on behalf of a subclass of all other non-hire victims similarly situated*; and

CANDIDO NUÑEZ and KEVIN SIMPKINS, *individually and on behalf of a subclass of all other delayed-hire victims similarly situated*,

Plaintiff-Intervenors,

-against-

THE CITY OF NEW YORK,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

On September 26, 2011, Defendant, the City of New York, moved this court for permission to reopen the application period for Exam 2000, to allow Sergeant Dakota Meyer, former United States Marine and a Medal of Honor recipient, to apply to take the exam. The United States and the Vulcan Society have consented on the record to the City's request.

The court's deep admiration for the sacrifices made by members of our nation's armed forces—and the Marines in particular—is a matter of record in this litigation. (See Second

Remedial-Phase Class Cert. Order (Docket Entry # 665) at 32-33.) Sergeant Meyer's record of sacrifice in particular is uniquely compelling. As explained by President Barack Obama when he awarded Sergeant Meyer the Medal of Honor, Sergeant Meyer received the Medal in recognition of the bravery he showed in 2009 when, while serving in Afghanistan, he entered a combat zone multiple times and exposed himself to enemy fire in an effort to evacuate American and Afghani soldiers trapped by an enemy ambush. See Remarks by the President Awarding the Medal of Honor to Sergeant Dakota Meyer (Sept. 15, 2011). According to Sergeant Meyer's attorney, Sergeant Meyer was occupied with duties assigned by the Department of Defense in the last days of the exam application period. (See Attachment to Memorandum & Order (Docket Entry # 733-1).) In view of Sergeant Meyer's recognized and truly exceptional military service, and with the consent of all parties to this litigation, the court will grant the City's request for permission to reopen the application period for Sergeant Meyer from midnight, (EDT) September 26, 2011, until 11:59 p.m. (EDT) September 27, 2011.

However, the court will not accede to the City's request to allow a general, one-day re-opening of the application period. The application period for Exam 2000 was open from July 15, 2011, until September 19, 2011. (See Letter from City of New York (Docket Entry # 730).) This application period was accompanied by recruitment efforts intended to reach black and Hispanic communities. (See Injunctive Relief Hearing Tr. at 233:4-234:23; 385:25-386:23.) A brief, general re-opening of the application period, especially without any accompanying recruitment effort beyond the City's proposed updates of the New York City Fire Department's ("FDNY") and City Administrative Services's websites, would create a serious risk of an adverse impact on the minority groups who are substantially under-represented in the ranks of the FDNY. On the other hand, an exemption for one individual will have a de minimis adverse

impact on any group's representation in the FDNY. Therefore, the court will grant a re-opening of the application period as an exemption for this one exceptional individual, on the consent of the parties; however, the application period will not be re-opened to the general public, members of which have had ample opportunity to apply.

SO ORDERED.

Dated: Brooklyn, New York
September 26, 2011
5:25 p.m.

/s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge